

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1172

KA 18-02197

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CAMELL OLIVER, DEFENDANT-APPELLANT.
(APPEAL NO. 1.)

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (KATHY E. MANLEY OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KENNETH H. TYLER, JR., OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Stephen J. Dougherty, J.), rendered July 31, 2018. The judgment convicted defendant, upon his plea of guilty, of attempted criminal possession of a controlled substance in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: In appeal Nos. 1 and 2, defendant appeals from two separate judgments convicting him, upon his guilty pleas, of two separate and distinct counts of attempted criminal possession of a controlled substance in the third degree (Penal Law §§ 110.00, 220.16 [1]). Defendant contends in both appeals, and the People correctly concede, that the waiver of the right to appeal, which covered both pleas, is invalid (see *People v Thomas*, 34 NY3d 545, 565 [2019], cert denied – US –, 140 S Ct 2634 [2020]). Although defendant contends that his sentences were improperly enhanced, defendant failed to preserve his contention for our review “inasmuch as he did not object to [County Court’s] imposition of the enhanced sentence[s] and did not move to withdraw his plea[s] or vacate the judgment[s] of conviction” (*People v Moore*, 182 AD3d 1032, 1032 [4th Dept 2020]; see *People v Dumbleton*, 150 AD3d 1688, 1688 [4th Dept 2017], lv denied 29 NY3d 1019 [2017]). Considering that defendant agreed to the enhanced sentences in return for dismissal of a new felony charge that had been lodged against him, we decline to exercise our power to review his contention as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]). Contrary to defendant’s remaining contention, the sentences are not unduly harsh or severe.

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court